

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

CONTEMPORARY CARS, INC.
d/b/a MERCEDES-BENZ OF ORLANDO
and AUTONATION, INC.,
SINGLE AND JOINT EMPLOYERS

Cases 12-CA-26126
12-CA-26233
12-CA-26306
12-CA-26354
12-CA-26386
12-CA-26552

and

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

**GENERAL COUNSEL'S OPPOSITION TO
RESPONDENTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Counsel for the General Counsel opposes the Motion for Partial Summary Judgment that was jointly filed by Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando and AutoNation, Inc. (referred to herein separately as Respondent MBO and Respondent AutoNation, respectively, and referred to herein collectively as Respondents) in this matter on June 18, 2010. Counsel for the General Counsel opposes this motion because dismissal of the Section 8(a)(5) allegations involved herein, as sought by Respondents, is unwarranted. Respondents' arguments that these allegations must be dismissed because of the United States Supreme Court's decision in *New Process Steel v. National Labor Relations Board*, 560 U.S. ____, 2010 WL 2400089, Case 08-1457 (2010), are without merit.

I. BACKGROUND

On October 3, 2008, the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) filed a petition in Case 12-RC-9344 seeking to represent a unit of employees employed by Respondent MBO. The Regional Director for Region 12 issued a Decision and Direction of Election on November 14, 2008, directing an election in a unit of service technicians. On December 15, 2008, the two-member Board denied Respondent

MBO's request for review of the Regional Director's Decision and Direction of Election. An election was held on December 16, 2008, and the Union was certified as the unit employees' collective-bargaining representative on February 11, 2009. Respondent MBO refused to recognize and bargain with the Union and on June 25, 2009, the Regional Director for Region 12 issued a Complaint alleging that Respondent MBO's refusal to bargain violated Section 8(a)(5) of the Act. In *Mercedes-Benz of Orlando*, 354 NLRB No. 72 (2009), the two-member Board agreed that the Act had been violated, as alleged, and issued a Decision and Order directing Respondent MBO to recognize and bargain with the Union. Respondent MBO appealed the Board's Decision to the United States Court of Appeals for the D.C. Circuit, on the grounds that the decision of the two-member Board was invalid and that the certified unit was inappropriate.

On March 31, 2010, a Consolidated Complaint and Notice of Hearing issued in the instant cases, and on June 8, 2010, an Order Further Consolidating Cases and Amendment to Consolidated Complaint issued. (Attached as Exhibits 1 and 2). Respondents each filed an Answer to the Consolidated Complaint on April 14, 2010, and First Amended Answers to the Consolidated Complaint on June 1, 2010. On June 9, 2010, Respondents each filed an Answer and Affirmative Defenses to the Amended Consolidated Complaint (presumably these documents were intended to answer the Amendment to Consolidated Complaint) and on June 14, 2010, Respondents each filed an Amended Answer and Affirmative Defenses to Amended Consolidated Complaint. (The Amended Answers and Affirmative Defenses to Amended Consolidated Complaint filed by Respondent MBO and Respondent AutoNation are attached as Exhibits 3 and 4). In addition to the Motion for Partial Summary Judgment, Respondents also filed an Emergency Motion for Continuance on June 18, 2010. (Attached as Exhibit 5). That same day, the Associate Chief Administrative Law Judge granted the request for a continuance until some time after the Board has "considered the ramifications of the Supreme Court's recent

decision to the underlying related Board decision that impacts certain of the issues herein.”

(Attached as Exhibit 6).¹

The Consolidated Complaint, as amended, contains allegations that Respondents violated Section 8(a)(5) of the Act, although these allegations are relatively few in number compared to the large number of Section 8(a)(1) and (3) violations alleged in the Consolidated Complaint, as amended. These Section 8(a)(5) allegations include the unilateral layoff of four employees, unilateral changes to the employees’ terms and conditions of employment, and the refusal to furnish the Union with information. Many of the Section 8(a)(5) violations are also alleged as violations of Section 8(a)(1) and/or 8(a)(3) of the Act. In their motion for partial summary judgment, Respondents request that all of the alleged Section 8(a)(5) violations be dismissed, specifically, the allegations set forth in paragraphs 9(a)-(c), 40(a)-(b), 41(b)-(c), 43(a)-(e), 45, 46, 47, 48 and 51, of the Consolidated Complaint, as amended.²

As noted above, in support of the motion for partial summary judgment, Respondents rely on the United States Supreme Court’s holding in *New Process Steel, L.P. v. National Labor Relations Board*, 560 U.S. ___, 2010 WL 2400089, Case No. 08-1457 (2010), and its presumption that the United States Court of Appeals for the D.C. Circuit will summarily reverse the Board’s holding in *Mercedes-Benz of Orlando*, 354 NLRB No. 72 (2009). At page 3 of its Motion for Partial Summary Judgment, Respondents argue that the United States Supreme Court’s holding in *New Process Steel, L.P.* “obliterated any premise upon which to assert a duty

¹ On June 24, 2010, Counsel for the General Counsel filed a Request for Permission to File a Special Appeal and Appeal of the Associate Chief Administrative Law Judge’s Order Granting Respondents’ Emergency Motion for Continuance.

² Paragraphs 9(a) through 9(c) allege the appropriateness of the unit and the Union’s status as the bargaining representative; paragraph 44 alleges that certain subjects are mandatory subjects of bargaining; paragraphs 46 and 47 describe requested information and its relevance; and paragraph 51 is a concluding paragraph alleging that the conduct described in prior paragraphs violates Section 8(a)(5). Thus, only paragraphs 41(b)-(c), 43(a)-(e), 45 and 48 allege actual conduct violative of Section 8(a)(5).

to bargain,” in these cases and, at page 4, that “many of the issues in these consolidated cases are now mooted”³

Counsel for the General Counsel anticipates that the Court of Appeals for the D.C. Circuit will remand the underlying test of certification case, Case 12-CA-26377, to the Board, and that pursuant to the remand the Board will consider whether or not the Regional Director's certification of the Union as the employees' exclusive collective-bargaining representative was proper. The earlier decision that the bargaining unit is an appropriate one was based on well-established Board law and it appears likely that the properly constituted Board will conclude on remand that the Regional Director's certification of the Union was proper.⁴

II. ARGUMENT

Respondents' argument that the alleged Section 8(a)(5) violations should be dismissed is without merit. An employer's duty to recognize and bargain with a union attaches as of the date the union wins the election. See *The Celotex Corporation*, 259 NLRB 1186, 1193 (1982); *Howard Plating Industries*, 230 NLRB 178, 179 (1977). This duty to bargain continues under Section 8(a)(5) of the Act during the pendency of collateral litigation and the duty to bargain is not “suspended or relieved because litigation is pending before the court of appeals, or before the Board on remand from such court.” See *Bob's Big Boy Family Restaurants*, 264 NLRB 432, 434 (1982). Furthermore, “an employer who refuses to bargain with the Union as the exclusive bargaining representative of its employees during a test of certification does so at its own risk and may violate Section 8(a)(5) of the Act.” *Alta Vista Regional Hospital*, 355 NLRB No. 43, slip opinion, ALJD at 8 (2010).

³ Respondents also argue that they should not be required to litigate these consolidated cases until Counsel for General Counsel further amends the Consolidated Complaint to withdraw the Section 8(a)(5) allegations or the allegations are dismissed. This argument is addressed in Counsel for General Counsel's Request for Special Permission to Appeal and Appeal of the Associate Chief Administrative Law Judge's Order Granting Respondents' Emergency Motion for Continuance.

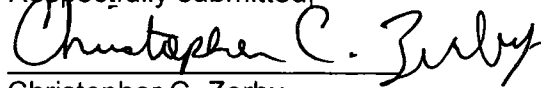
⁴In a prior decision issued in 2002, in Case 12-RC-8735 (formerly Case 17-RC-12053), the same unit of service technicians employed by MBO had been found appropriate, and MBO's request for review was denied by a properly constituted Board, except that team leaders and group leaders were permitted to vote subject to challenge.

Thus, contrary to Respondents' argument, the United States Supreme Court's decision in *New Process Steel, L.P.* and the expected remand of the test of certification case does not "obliterate" or otherwise relieve Respondents of the duty to bargain. Rather, the Board will again consider Respondent MBO's arguments concerning the certification of the Union as the employees' collective-bargaining representative. Assuming that the Board again finds that the unit is appropriate, the certification of the Union was valid, and that Respondent MBO has unlawfully failed to bargain, then the obligation to recognize and bargain with the Union will have attached on December 16, 2008, and the unilateral changes in terms and conditions of employment and refusal to furnish information requested by the Union made after that date, as alleged in the Consolidated Complaint, as amended, if proven, will constitute violations of Section 8(a)(5) of the Act. Of course, if the Board finds to the contrary concerning the appropriateness of the unit and certification, then the allegations of unilateral changes and other Section 8(a)(5) conduct will be without merit.

The alleged Section 8(a)(5) violations set forth in the Consolidated Complaint, as amended, cannot be finally decided until the underlying test of certification case has been resolved, which a simple remand by the Court of Appeals for the D.C. Circuit will not do. Thus, dismissal of the Section 8(a)(5) charges before resolution of the test of certification case would be improper and the Union would be severely prejudiced because it would be unable to file timely new charges regarding the alleged violations of Section 8(a)(5), which Respondents are alleged to have committed on various dates in 2009. Respondents' request for a partial motion for summary judgment is without basis and should be denied.

Dated at Tampa Florida this 25th day of June 2010.

Respectfully submitted,

A handwritten signature in black ink, reading "Christopher C. Zerby". The signature is written in a cursive, flowing style.

Christopher C. Zerby
Counsel for General Counsel
201 E. Kennedy Blvd., Suite 530
Tampa, Florida 33602

CERTIFICATE OF SERVICE

I hereby certify that General Counsel's Opposition to Respondents' Motion for Partial Summary Judgment in Cases 12-CA-26126 et al. was electronically filed on the 25th day of June 2010.

By electronic filing at www.nlrb.gov to:

Lester Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street
Washington, DC 20570-0001

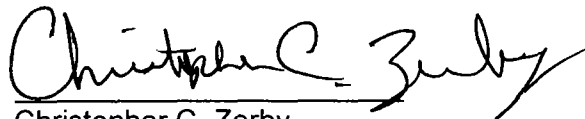
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Christopher C. Zerby
Counsel for the General Counsel

**UNITED STATES OF AMERICA
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CONTEMPORARY CARS, INC.
d/b/a MERCEDES-BENZ OF ORLANDO
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INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, has charged in Cases 12-CA-26126, 12-CA-26233, 12-CA-26306, 12-CA-26354 and 12-CA-26552 that Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando, herein individually called Respondent MBO, and AutoNation, Inc., herein individually called Respondent AutoNation, and herein collectively called Respondents, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The original charge in Case 12-CA-26126 was filed by the Union on December 11, 2008, and a copy was served by regular mail on Respondent MBO on December 12, 2008.

(b) The first amended charge in Case 12-CA-26126 was filed by the Union on January 7, 2009, and a copy was served by regular mail on Respondent MBO on January 8, 2009.

(c) The second amended charge in Case 12-CA-26126 was filed by the Union on February 17, 2009, and a copy was served by regular mail on Respondents on February 17, 2009.

(d) The third amended charge in Case 12-CA-26126 was filed by the Union on June 8, 2009, and a copy was served by regular mail on Respondents on June 8, 2009.

(e) The fourth amended charge in Case 12-CA-26126 was filed by the Union on August 20, 2009, and a copy was served by regular mail on Respondents on August 21, 2009.

(f) The fifth amended charge in Case 12-CA-26126 was filed by the Union on March 22, 2010, and a copy was served by regular mail on Respondents on March 23, 2010.

(g) The original charge in Case 12-CA-26233 was filed by the Union on March 16, 2009, and a copy was served by regular mail on Respondents on March 17, 2009.

(h) The amended charge in Case 12-CA-26233 was filed by the Union on March 22, 2010, and a copy was served by regular mail on Respondents on March 23, 2010.

(i) The original charge in Case 12-CA-26306 was filed by the Union on April 13, 2009, and a copy was served by regular mail on Respondents on April 14, 2009.

(j) The first amended charge in Case 12-CA-26306 was filed by the Union on June 12, 2009, and a copy was served by regular mail on Respondents on June 12, 2009.

(k) The second amended charge in Case 12-CA-26306 was filed by the Union on June 19, 2009, and a copy was served by regular mail on Respondents on June 22, 2009.

(l) The original charge in Case 12-CA-26354 was filed by the Union on May 29, 2009, and a copy was served by regular mail on Respondents on June 2, 2009.

(m) The amended charge in Case 12-CA-26354 was filed by the Union on June 12, 2009, and a copy was served by regular mail on Respondents on June 12, 2009.

(n) The charge in Case 12-CA-26552 was filed by the Union on November 19, 2009, and a copy was served by regular mail on Respondents on November 19, 2009.

2.

(a) At all material times, Respondent MBO, a Florida corporation with an office and place of business located in Maitland, Florida, herein called its Maitland, Florida facility, has operated an automobile dealership and has been engaged in the sale, leasing, financing, repair and service of new and used vehicles, including automobiles, sports utility vehicles, vans and trucks, and in the sale of vehicle parts and accessories.

(b) During the past 12 months, Respondent MBO, in conducting its business operations described above in paragraph 2(a), derived gross revenues valued in excess of \$500,000, and purchased and received at its Maitland, Florida facility, goods valued in excess of \$50,000 directly from points located outside the State of Florida.

(c) At all material times, Respondent MBO has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3.

(a) At all material times, Respondent AutoNation, a Florida corporation with its corporate headquarters located in Fort Lauderdale, Florida, herein called its Fort Lauderdale, Florida corporate headquarters, and automobile dealerships located throughout the United States, has been engaged in the sale, leasing, financing, repair and service of new and used vehicles, including automobiles, sports utility vehicles, vans and trucks, and in the sale of vehicle parts and accessories.

(b) During the past 12 months, Respondent AutoNation, in conducting its business operations described above in paragraph 3(a), derived gross revenues valued in excess of \$500,000, and purchased and received at its Fort Lauderdale, Florida facility, goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

(c) At all material times, Respondent AutoNation has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4.

(a) At all material times, Respondent MBO and Respondent AutoNation have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises.

(b) Based on the operations described above in paragraph 4(a), Respondent MBO and Respondent AutoNation constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

5.

(a) At all material times, Respondent MBO and Respondent AutoNation have been parties to a franchise agreement, pursuant to which they jointly engage in the leasing, financing, repair and service of new and used vehicles, including automobiles, sports utility vehicles, vans and trucks, and in the sale of vehicle parts and accessories.

(b) At all material times, Respondent AutoNation has possessed control over the labor relations policy of Respondent MBO, exercised control over the labor relations policy of Respondent MBO, and administered a common labor policy with Respondent MBO for the employees of Respondent MBO.

(c) At all material times, Respondent MBO and Respondent AutoNation have been joint employers of the employees of Respondent MBO.

6.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

7.

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Clarence "Bob" Berryhill	-	General Manager of Respondent MBO
Bibi Bickram	-	Human Resource Specialist of Respondent AutoNation
Art Bullock	-	Service Director of Respondent MBO
Pete DeVita	-	Market President of Respondent AutoNation for Market 4 (Orlando and Jacksonville, Florida)
Bruce Makin	-	Team Leader of Respondent MBO
Maia Menendez	-	Service Manager of Respondent MBO
Charles Miller	-	Parts Director and Acting Service Director of Respondent MBO

(b) At all material times until on or about December 31, 2009, Roberta "Bobbie" Bonavia held the position of Human Resources Director of Respondent AutoNation for its Florida Region and was a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act.

(c) At all material times until on or about a date in early to mid-December 2008, a more precise date being presently unknown to the General Counsel, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Andre Grobler	-	Team Leader of Respondent MBO
Oudit Manbahal	-	Team Leader of Respondent MBO

(d) At all material times since on or about a date in early to mid-December 2008, a more precise date being presently unknown to the General Counsel, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Alex Aviles	-	Team Leader of Respondent MBO
Rex Strong	-	Team Leader of Respondent MBO

8.

At all material times until on or about April 4, 2009, James Weiss held the position of Service Technician of Respondent MBO and was an agent of Respondents within the meaning of Section 2(13) of the Act.

9.

(a) The following employees of Respondent MBO, hereinafter called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Mercedes-Benz service technicians, employed by Respondent MBO at its facility at 810 North Orlando Avenue, Maitland, Florida, excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

(b) On December 16, 2008, a majority of the Unit designated and selected the Union as their representative for the purposes of collective bargaining with Respondent MBO in a representation election conducted by the Board in Case 12-RC-9344, and, on February 11, 2009, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since December 16, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(d) Based on the Union's unfair labor practice charge against Respondent MBO in Case 12-CA-26377, on August 28, 2009, the Board issued a Decision and Order, reported at 354

NLRB No. 72, finding that Respondent MBO violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(e) Respondent MBO's appeal of the Board Order described above in paragraph 9(d) is pending before the United States Court of Appeals for the District of Columbia Circuit.

10.

Since on or about July 8, 2008, Respondents, by issuing the AutoNation Associate Handbook to their employees employed at Respondent MBO's Maitland, Florida facility and at all of Respondent AutoNation's other automobile dealerships in the United States, has promulgated and maintained a no-solicitation rule stating in relevant part, "we prohibit solicitation by an associate of another associate while either of you is on company property."

11.

On or about dates in late July 2008 and August 2008, more precise dates being presently unknown to the General Counsel, Respondents, by Andre Grobler, at Respondent MBO's Maitland, Florida facility, created the impression of surveillance of employees' union activities.

12.

On or about September 25, 2008, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, solicited grievances from employees and impliedly promised to remedy them in order to induce employees to abandon their support for the Union.

13.

On or about October 3, 2008, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility:

- (a) Interrogated employees about their union activities and sympathies.
- (b) Solicited employees to urge other employees to reject the Union.

14.

On or about dates in early October 2008 through December 2008, more precise dates being presently unknown to the General Counsel, Respondents, by Andre Grobler, at Respondent MBO's Maitland, Florida facility, interrogated employees about their union activities.

15.

On or about October 9, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

- (a) Interrogated employees about their union sympathies and about the union sympathies of other employees.
- (b) Solicited employees to help Respondent discharge employees who supported the Union.
- (c) Threatened to discharge and blackball employees who supported the Union.
- (d) Told employees that it would be futile to select the Union as their collective-bargaining representative.
- (e) Threatened employees with a wage freeze and stricter enforcement of work rules if they selected the Union as their collective-bargaining representative.
- (f) Created the impression of surveillance of employees' union activities.

16.

On or about October 9, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, told employees that it would be futile to select the Union as their collective-bargaining representative.

17.

On or about October 10, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

- (a) Told employees that it would be futile to select the Union as their collective-bargaining representative.

(b) Threatened employees with blacklisting if they joined or supported the Union.

(c) Solicited employees' grievances and impliedly promised to remedy them in order to induce employees to abandon their support for the Union.

(d) Threatened employees with loss of ice cream and various other benefits if they joined or supported the Union.

18.

On or about October 17, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Told employees that it would be futile to select the Union as their collective-bargaining representative.

(b) Solicited employees' grievances and impliedly promised to remedy them in order to induce employees to abandon their support for the Union.

19.

On or about October 30, 2008, on or about other dates in November 2008, more precise dates being presently unknown to the General Counsel, and on or about December 10, 2008, Respondents, by Clarence, "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, interrogated employees about the union sympathies of other employees.

20.

On or about October 30, 2008, Respondents, by their agent, and by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, solicited an employee to go to a Union meeting to learn about employees' grievances and to report them to the Respondents.

21.

On or about dates from late October 2008 through mid-November 2008, more precise dates being presently unknown to the General Counsel, Respondents, by James Weiss, at Respondent MBO's Maitland, Florida facility, interrogated employees about their union activities and sympathies.

22.

On or dates in November 2008, including on or about November 25, 2008, more precise dates being presently unknown to the General Counsel, and on or about December 2, 2008 and December 15, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, interrogated employees about the union sympathies of other employees.

23.

On or about a date in November 2008, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Promised to redress employees' grievances in order to induce employees to abandon their support for the Union.

(b) Threatened employees with loss of jobs if they selected the Union as their collective-bargaining representative.

24.

On or about a date in mid-November 2008, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Threatened employees with discharge if they engaged in union activities.

(b) Told employees it would be futile to select the Union as their collective-bargaining representative.

25.

In or about late November 2008 or early December 2008, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, interrogated employees about their union sympathies.

26.

On or about November 29, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

- (a) Asked employees to prepare a petition opposing the selection of the Union as the employees' collective-bargaining representative.
- (b) Asked employees to solicit other employees to sign a petition opposing the selection of the Union as the employees' collective-bargaining representative.
- (c) Threatened to blackball employees who supported the Union.

27.

On or about December 4, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, asked employees to solicit other employees to sign a petition opposing representation by the Union.

28.

On or about dates in early December 2008, more precise dates being presently unknown to the General Counsel, Respondents, by James Weiss, at Respondent MBO's Maitland, Florida facility, circulated a petition against the Union among employees and solicited employees to sign the petition.

29.

On or about dates in early to mid-December 2008, more precise dates being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, told employees that their grievances had been adjusted by the demotion of Andre Grobler and Oudit Manbahal, in order to induce employees to abandon their support for the Union.

30.

On or about December 9, 2008, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, told employees that their grievances had been adjusted by the demotion of Andre Grobler and Oudit Manbahal from their team leader

positions, and by the replacement of Andre Grobler and Oudit Manbahal as team leaders by Alex Aviles and Rex Strong, in order to induce employees to abandon their support for the Union.

31.

On or about December 16, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

- (a) Interrogated employees about the union sympathies of employees.
- (b) Interrogated employees about whether employees had voted in the secret ballot election conducted by the Board.
- (c) Threatened employees with closer supervision because they selected the Union as their collective-bargaining representative.
- (d) Informed employees that it was futile for them to select the Union as their collective-bargaining representative.
- (e) Created the impression of surveillance of employees' union activities.
- (f) Threatened to discharge employees because they selected the Union as their collective-bargaining representative.

32.

On or about December 19, 2008, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

- (a) Threatened to discharge employees because they selected the Union as their collective-bargaining representative.
- (b) Informed employees that it was futile for them to select the Union as their collective-bargaining representative.

33.

On or about dates from mid-December 2008 through mid-January 2009, and on or about January 11, 2009, more precise dates being presently unknown to the General Counsel,

Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, threatened employees with discharge because of their union activities and sympathies.

34.

On or about a date in early January 2009, a more precise date being presently unknown to the General Counsel, Respondents, by Charles Miller, at Respondent MBO's Maitland, Florida facility, threatened to demote employees because of their union sympathies and activities, and promised to promote employees because they oppose the Union.

35.

On or about January 20, 2009, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, threatened employees with stricter enforcement of work rules because they selected the Union as their bargaining representative.

36.

On or about dates in late January 2009 or early February 2009, more precise dates being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility:

(a) Threatened to discharge employees because of their union activities and sympathies.

(b) Promised employees promotions if they made claims of misconduct by other employees who supported the Union.

37.

On or about a date in early March 2009, a more precise date being presently unknown to the General Counsel, Respondents, by their agent, at Respondent MBO's Maitland, Florida facility, threatened employees with unspecified reprisals if they cooperated in the Board's investigation of unfair labor practice charges against Respondents.

38.

In or about mid-March 2009, a more precise date being presently unknown to the General Counsel, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility, solicited employees to make claims of misconduct against other employees because of the other employees' support for the Union.

39.

On or about February 1, 2009, Respondents stopped providing ice cream to employees in the Unit pursuant to their threat described above in paragraph 17(d).

40.

On or about March 31, 2009, Respondents, by Clarence "Bob" Berryhill, at Respondent MBO's Maitland, Florida facility:

(a) Told employees that Respondents would not recognize the Union as the collective-bargaining representative of the Unit until Respondents and the Union entered into a collective-bargaining agreement.

(b) Told employees that Respondents would not allow Union stewards to serve as representatives of employees in the Unit in meetings between Respondents and employees in the Unit concerning disciplinary matters.

41.

(a) On or about December 8, 2008, Respondents discharged their employee, Anthony Roberts.

(b) On or about April 2, 2009, Respondents discharged Juan Cazorla.

(c) On or about April 3, 2009, Respondents discharged David Poppo, Tumeshwar "John" Persaud and Larry Puzon.

(d) Respondents engaged in the conduct described above in paragraphs 41(a), 41(b) and 41(c) because the named employees and other employees of Respondents joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

42.

(a) On or about dates in August and September 2009, and on or about October 2, 2009, more precise dates being presently unknown to the General Counsel, Respondents' employee and the Union's shop steward, Dean Catalano engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection and concertedly complained to Respondents concerning wages, hours, and working conditions, by demanding sanitary working conditions and training concerning sanitary working conditions.

(b) On or about October 13, 2009, Respondents issued a "documented coaching" discipline to their employee, Dean Catalano.

(c) Respondents engaged in the conduct described above in paragraph 42(b) because Dean Catalano engaged in concerted activities described above in paragraph 42(a) and because he joined and assisted the Union, and to discourage employees from engaging in these activities.

43.

(a) On or about January 23, 2009, and May 22, 2009, Respondents, by Alex Aviles, at Respondent MBO's Maitland, Florida facility, told employees that, because of the Union, Respondent MBO had not conducted employee skill rate reviews, which Respondent MBO uses to determine wage increases for Unit employees.

(b) From on or about a date in January 2009 until on or about a date in August 2009, more precise dates being presently unknown to the General Counsel, Respondent MBO unilaterally suspended the issuance of semi-annual skill rate performance reviews and wage increases based on those performance reviews for Unit employees on Respondent MBO's "red team."

(c) From on or about a date in January 2009 until on or about a date in October 2009, more precise dates being presently unknown to the General Counsel, Respondent MBO unilaterally suspended the issuance of semi-annual skill rate performance reviews and wage

increases based on those performance reviews for Unit employees on Respondent MBO's "gold team" and "green team."

(d) On or about February 16, 2009, Respondent MBO reduced the wages that Unit employees are paid for completing pre-paid maintenance package services provided by Respondent MBO pursuant to the AutoNation vehicle care program.

(e) On or about a date in April 2009, a more precise date being presently unknown to the General Counsel, Respondent MBO implemented a new rule, announced in a letter dated February 18, 2009, requiring that Unit employees will be charged for damages to vehicles, and since that date, Respondent MBO has maintained and enforced that rule.

44.

The subjects set forth above in paragraphs 41(b), 41(c), and 43(a) through 43(e) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for purposes of collective bargaining.

45.

Respondent MBO engaged in the conduct described above in paragraphs 41(b), 41(c), and 43(a) through 43(e) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent MBO with respect to this conduct or with respect to the effects of this conduct, including Respondents' failure to pay severance pay to the employees named above in paragraphs 41(b) and 41(c).

46.

Since on or about April 17, 2009, the Union, by certified mail letter to Respondent MBO and Respondent AutoNation dated April 17, 2009, and by verbal request on or about May 6, 2009, has requested that Respondent MBO furnish the Union with the following information:

I. Current data and data for the prior three (3) years showing:

a. A breakdown for any insurance premiums (such as medical, dental, vision, life, accident, etc.) by type of coverage (such as single, one dependent, family, etc.) and carrier, including details on per employee premium costs (or premium equivalent for self-insured plans), number of

employees by type of coverage, and any employee-share of these insurance premiums

b. Information by type of coverage, carrier, costs and retiree-share of costs for any insurance for retirees

c. C.O.B.R.A. rates for medical, prescription drug, dental, and vision insurance

II. A current detailed breakdown, by bargaining unit employee(s), showing the following:

a. Pay/occupation grade, or classification level

b. Flat Rate Hour pay rate for each technician

c. Straight-time hourly rate (if applicable)

d. How many hours each tech worked per calendar year

e. Shift primarily assigned to

f. Age or date of birth

g. Seniority or date of hire

III. For the entire bargaining unit:

a. The current average hourly rate

b. Number of employees and at which level of the vacation schedule they reside

c. Average number of days used per bargaining unit member for paid sick leave, paid personal days, paid jury duty, paid bereavement leave, paid military leave, and any other types of paid leave during the most recent year (calendar, fiscal or 12-month period)

d. Average annual cost to the employer per employee for pension, health care, life insurance, accidental death & dismemberment, and every other type of insurance or benefit (please indicate what time period this data is for)

e. Average hours of overtime worked per week per bargaining unit member

f. Additional compensation for employees with 20-25 years employment

IV. For any pension, savings or stock plan:

- a. Form 5500 and all supplements for the past three (3) years
- b. Annual reports and actuarial reports for the past three (3) years
- c. The most current Summary Plan Description (SPD) and Summary Material Modification (SMM)
- e. For voluntary participation all information for contribution plans, such as 401(k) plans, the annual average for the past three (3) years of growth or decline:
 - i. The number of bargaining unit members participating
 - ii. The average contribution made by these participants
 - iii. The number of these participants making the maximum contributions
 - iv. The average employer match/contribution for these participants
 - v. The average account balance
 - vi. The number of these participants with loans from the plan

47.

The information requested by the Union, as described above in paragraph 46, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

48.

Since on or about April 17, 2009, as confirmed in a letter to the Union dated June 4, 2009, Respondent MBO has failed and refused to provide the Union with the information requested by it as described above in paragraph 46.

49.

By the conduct described above in paragraphs 10 through 12, 13(a), 13(b), 14, 15(a) through 15(f), 16, 17(a) through 17(d), 18(a), 18(b), 19 through 22, 23(a), 23(b), 24(a), 24(b), 25, 26(a) through 26(c), 27 through 30, 31(a) through 31(f), 32(a), 32(b), 33 through 35, 36(a), 36(b), 37 through 39, 40(a), 40(b), 42(b), 42(c), and 43(a), Respondents have been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

50.

By the conduct described above in paragraph 41(a) through 41(d), 42(b) and 42(c), Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

51.

By the conduct described above in paragraphs 40(a), 40(b), 41(b), 41(c), 43(a) through 43(e), 45 and 48, Respondents have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of their employees, in violation of Section 8(a)(1) and (5) of the Act.

52.

The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order providing that Respondents are liable to make whole the employees named above in paragraphs 41(a) through 41(c) for any loss of earnings they suffered by reason of their unlawful discharges by Respondents, and to make whole all of the employees in the Unit for any loss of earnings they suffered by reason of Respondents' conduct described above in paragraphs 41(b), 41(c), 43(a) through 43(e) and 45, by payment of backpay plus quarterly compounded interest. The General Counsel further seeks an Order requiring, in addition to the posting of the notice by Respondents at Respondent MBO's facility, that Respondents e-mail the notice to employees employed at Respondent MBO's Maitland, Florida facility consistent with Respondent MBO's normal method of communicating with employees. The General Counsel further seeks an Order requiring Respondents to remedy the unfair labor practice described above in paragraph 10 by removing the unlawful no-solicitation

rule from the AutoNation Associate Handbook, and posting a notice at all automobile dealership locations of Respondent AutoNation in the United States. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be received by this office **on or before April 14, 2010, or postmarked on or before April 13, 2010**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the documents need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf

file containing the required signature, then the E-Filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT commencing on **May 3, 2010**, at 10:00 a.m., and on consecutive days thereafter until concluded, at a location to be determined in the vicinity of Orlando, Florida, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Tampa, Florida, this 31st day of March, 2010.

A handwritten signature in cursive script, reading "Rochelle Kentov", written in black ink.

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 East Kennedy Boulevard, Suite 530
Tampa, Florida 33602-5824

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

CONTEMPORARY CARS, INC.
d/b/a MERCEDES-BENZ OF ORLANDO
and AUTONATION, INC.,
SINGLE AND JOINT EMPLOYERS

and

Cases 12-CA-26126
12-CA-26233
12-CA-26306
12-CA-26354
12-CA-26386
12-CA-26552

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO

**ORDER FURTHER CONSOLIDATING CASES AND
AMENDMENT TO CONSOLIDATED COMPLAINT**

Upon charges filed in Cases 12-CA-26126, 12-CA-26233, 12-CA-26306, 12-CA-26354 and 12-CA-26552 by International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on March 31, 2010, against Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando, herein individually called Respondent MBO and AutoNation, Inc., herein individually called Respondent AutoNation, and herein collectively called Respondents. The Union has charged in Case 12-CA-26386 that Respondents have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that Cases 12-CA-26126, 12-CA-26233, 12-CA-26306, 12-CA-26354, 12-CA-26552 and 12-CA-26386 are consolidated.

IT IS FURTHER ORDERED, pursuant to Section 102.17 of the Board's Rules and Regulations that the Consolidated Complaint issued on March 31, 2010 is amended as follows:

A. The caption is amended to read as set forth above.

B. Paragraph 1(o) below is added:

1.

(o) The charge in Case 12-CA-26386 was filed by the Union on June 22, 2009, and a copy was served by regular mail on Respondents on the same date.

C. Paragraph 3(a) is amended to read as follows:

3.

(a) At all material times, Respondent AutoNation, a Delaware corporation with its corporate headquarters located in Fort Lauderdale, Florida, herein called its Fort Lauderdale, Florida corporate headquarters, and automobile dealerships located throughout the United States, has been engaged in the sale, leasing, financing, repair and service of new and used vehicles, including automobiles, sports utility vehicles, vans and trucks, and in the sale of vehicle parts and accessories.

D. Paragraph 15(b) is amended to read as follows:

15.

(b) Solicited employees to help Respondents discharge employees who supported the Union.

E. Paragraph 15(g) below is added:

(g) Threatened to discharge employees if they did not assist Respondents in Respondents' efforts against the Union.

F. Paragraphs 41(e) through 41(g) below are added:

41.

(e) On or about dates between October 3, 2008, and April 4, 2009, Respondents persistently and repeatedly solicited and directed their employee James Weiss to assist them in their efforts against the Union by, among other things: interrogating him about his union sympathies and the union sympathies of other employees; soliciting him to go to a Union meeting to learn about employees grievances and report them to Respondents; directing him to prepare a petition opposing the selection of the Union as the employees' collective-bargaining representative and to solicit other employees to sign the petition; soliciting him to help them discharge employees who supported the Union; promising him promotions if he opposed the Union and made claims of misconduct by employees who supported the Union; threatening him with discharge if he did not assist Respondents in their efforts against the Union; threatening him with stricter enforcement of work rules because employees selected the Union as their bargaining representative; and threatening him with unspecified reprisals if he cooperated in the Board's investigation of unfair labor practice charges against Respondents.

(f) On or about April 4, 2009, by their conduct described above in paragraph 41(e), Respondents caused the termination of employment of their employee James Weiss.

(g) Respondents engaged in the conduct described above in paragraphs 41(e) and 41(f) because their employees joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

G. Paragraph 50 is amended to read as follows:

50.

By the conduct described above in paragraphs 41(a) through 41(g), 42(b) and 42(c), Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

ANSWER REQUIREMENT

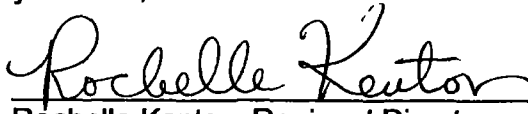
Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an Answer to the Amendment to Consolidated Complaint. The Answer must be received by this office **on or before June 22, 2010, or postmarked on or before June 21, 2010**. Unless filed electronically in a pdf format, Respondents should file an original and four copies of the Answer with this office and serve a copy of the Answer on each of the other parties.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlrb.gov>, click on **E-Gov**, then click on the **E-Filing** link and then follow the directions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the Answer being filed electronically is a pdf document

containing the required signature, no paper copies of the documents need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-Filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may not be filed by facsimile transmission. If no Answer is filed, or if an Answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amendment to Consolidated Complaint are true.

DATED at Tampa, Florida, this 8th day of June, 2010.



Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

CONTEMPORARY CARS, INC. D/B/A)	
MERCEDES-BENZ OF ORLANDO AND)	
AUTONATION, INC., SINGLE AND JOINT)	
EMPLOYERS)	
	)	Charge Nos.
and	)	12-CA-26126
	)	12-CA-26233
	)	12-CA-26306
INTERNATIONAL ASSOCIATION OF	)	12-CA-26354
MACHINISTS AND AEROSPACE	)	12-CA-26386
WORKERS, AFL-CIO	)	12-CA-26552

**RESPONDENT AUTONATION, INC.'S AMENDED ANSWER AND AFFIRMATIVE
DEFENSES TO AMENDED CONSOLIDATED COMPLAINT**

Comes now Respondent AUTONATION, INC. ("AutoNation"), by and through undersigned Counsel, and, pursuant to Section 102.23 of the Board's Rules and Regulations, as amended, timely files the following Amended Answer and Affirmative Defenses to the Amended Consolidated Complaint ("Complaint") issued by the Regional Director on June 8, 2010.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor Relations Board (NLRB) and the service of such charge upon AutoNation, such allegations are time-barred by Section 10(b) of the National Labor Relations Act, as amended (hereinafter "NLRA").

SECOND DEFENSE

The Complaint fails to give AutoNation fair and adequate notice of the charges against it and thereby denies AutoNation its right to due process under the U.S. Constitution, its right to

notice of the charges under Section 10 of the NLRA, and its right to notice and a fair hearing under the Board's Rules and Regulations.

THIRD DEFENSE

The Complaint is invalid to the extent that any alleged agents of AutoNation committed acts that are ultimately determined to be outside the scope of their employment, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The Complaint is invalid to the extent that it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

All allegations of discriminatory treatment are invalid to the extent that any alleged discriminatee would have been treated in precisely the same manner in the absence of any alleged improper animus.

SIXTH DEFENSE

The Region's investigation establishes that MBO had a valid economic justification for laying off the alleged discriminatees named in Paragraphs 41(a) through 41(c) of the Complaint.

SEVENTH DEFENSE

The Complaint is invalid to the extent that that General Counsel has pled legal conclusions rather than required factual allegations.

EIGHTH DEFENSE

The group of MBO employees composing the unit for which the Union was certified as the exclusive bargaining representative is an inappropriate unit for collective bargaining, and said certification is presently under challenge before the U.S. Court of Appeals.

NINTH DEFENSE

There has not been a proper resolution of MBO's Request for Review of the Region's determination on the appropriateness of the voting unit in Case No. 12-RC-9344. The December 15, 2008 order denying Respondent's December 5, 2008 Request for Review is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

TENTH DEFENSE

There has not been a proper resolution of Counsel for the General Counsel's Motion for Summary Judgment in Case No. 12-CA-26377. The August 28, 2009 Decision and Order granting Counsel for the General Counsel's July 13, 2009 Motion for Summary Judgment, found at 354 NLRB No. 72, is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

ELEVENTH DEFENSE

To the extent that any alleged changes were made to the terms or conditions of employment, they were made in the ordinary course of business, and did not alter the course of business or the *status quo ante*.

TWELFTH DEFENSE

Supervisors and agents of AutoNation expressed only views, arguments, or opinions, containing no threat of reprisal, promise of benefits, or suggestion of surveillance. Such statements were protected in their entirety by Section 8(c) of the Act.

THIRTEENTH DEFENSE

The Complaint is invalid to the extent that it contains allegations that were not included in a timely-filed, pending unfair labor practice charge against AutoNation.

FOURTEENTH DEFENSE

The Complaint is barred by the doctrine of laches.

FIFTEENTH DEFENSE

Attorney Douglas R. Sullenberger is not an agent of AutoNation.

SIXTEENTH DEFENSE

The Complaint is invalid to the extent that it asserts frivolous claims against AutoNation, and actively mischaracterizes the facts known to General Counsel in an attempt to create a prejudicial distortion of the actual facts.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

Responding to the initial unnumbered paragraphs of the Complaint, AutoNation denies that it has committed any unfair labor practices.

1. Responding to Paragraphs 1(a) through 1(o) of the Complaint, AutoNation admits that the charges and amendments were filed on the dates listed and that AutoNation has received them, but AutoNation has no knowledge as to the dates on which the Board placed them in the mail.
2. (a). Responding to Paragraph 2(a) of the Complaint, upon information and belief, AutoNation admits the allegations contained therein.

(b). Responding to Paragraph 2(b) of the Complaint, upon information and belief, AutoNation admits the allegations contained therein.

(c). Responding to Paragraph 2(c) of the Complaint, upon information and belief, AutoNation admits the allegations contained therein.
3. (a). Responding to Paragraph 3(a) of the Complaint, AutoNation admits that it is a Delaware corporation, admits that it is headquartered in Fort Lauderdale, denies that its

business takes place anywhere other than in Fort Lauderdale, and denies that its business is as described in the Complaint.

(b). Responding to Paragraph 3(b) of the Complaint, AutoNation admits that during the last 12 months, it met the jurisdictional thresholds alleged, but denies that it did so in conducting business as described Paragraph 3(a) of the Complaint.

(c). Responding to Paragraph 3(c) of the Complaint, AutoNation admits the allegations contained therein.

4. (a) Responding to Paragraph 4(a) of the Complaint, AutoNation admits that, with respect to the events covered by the Complaint, it and MBO are affiliated business enterprises, that it and MBO share common ownership, that it and MBO have formulated and administered a common labor policy, and that it and MBO have provided services for and made sales to each other. AutoNation denies that it and MBO share common officers, directors, or management, that it and MBO have common supervision, that it and MBO share common premises and facilities, that it and MBO have interchanged personnel with each other, or that it and MBO have held themselves out to the public as single-integrated business enterprises.

(b) Responding to Paragraph 4(b) of the Complaint, AutoNation admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 4(a) of this Answer indicate that AutoNation and MBO constitute a single integrated enterprise and a single employer. AutoNation further admits that it and MBO are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. AutoNation makes this admission of single integrated enterprise and single employer status with the recognition

that AutoNation denies that it and MBO shared or will share the same relationship with respect to events or circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. AutoNation makes the preceding admissions responding to Paragraphs 4(a) and 4(b) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other single integrated enterprise or single employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, AutoNation states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and AutoNation will challenge the admissibility of the preceding admissions in any other forum or proceeding.

5. (a) Responding to Paragraph 5(a) of the Complaint, AutoNation denies the allegations contained therein.

(b) Responding to Paragraph 5(b) of the Complaint, AutoNation admits that, with respect to the events covered by the Complaint, it has possessed and exercised measures of control over the labor relations policy at MBO, and that, to the extent its relationship with MBO in this case can be described as a “common labor policy,” such “common labor policy” was jointly administered by it and MBO.

(c) Responding to Paragraph 5(c) of the Complaint, AutoNation admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 5(b) of this Answer indicate that MBO and AutoNation are joint employers of the technicians working at MBO. AutoNation further admits that it and MBO are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. AutoNation makes this admission that it and MBO jointly employ the technicians working at MBO with the recognition that AutoNation denies that it and MBO shared or will share the same relationship with respect to events or circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. AutoNation makes the preceding admissions responding to Paragraphs 5(b) and 5(c) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other joint employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, AutoNation states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and AutoNation will challenge the admissibility of the preceding admissions in any other forum or proceeding.

6. Responding to Paragraph 6 of the Complaint, AutoNation admits the allegations contained therein.

7. (a) Responding to Paragraph 7(a) of the Complaint, AutoNation admits that Bickram and DeVita have at times held the positions listed opposite their names and have at times been agents and supervisors of AutoNation within the meaning of the NLRA, but denies that they held such positions and were agents and supervisors within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint. AutoNation denies that Bickram and DeVita acted as supervisors over MBO employees at any time. AutoNation admits, upon information and belief, that Berryhill, Bullock, Makin, Menendez, and Miller have at times held the positions listed opposite their names and have at times been agents and supervisors of MBO within the meaning of NLRA, but denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint.
- (b) Responding to Paragraph 7(b) of the Complaint, AutoNation admits that Bonavia at times and until December 31, 2009 held the position ascribed to her in the Complaint and that she was at times an agent and supervisor of AutoNation, but denies that she held such position and was an agent and supervisor “at all material times,” as that term is not defined in the Complaint. AutoNation denies that Bonavia acted as a supervisor over MBO employees at any time.
- (c) Responding to Paragraph 7(c) of the Complaint, AutoNation admits, upon information and belief, that Grobler and Manbahal at times and until early to mid-December 2008 held the positions listed opposite their names and were agents and supervisors of MBO within the meaning of the NLRA, but denies that they held such

positions and were agents and supervisors of MBO within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint.

(d) Responding to Paragraph 7(d) of the Complaint, AutoNation admits, upon information and belief, that Aviles and Strong at times since early to mid-December 2008 held the positions listed opposite their names and were agents and supervisors of MBO within the meaning of the NLRA, but denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint.

8. Responding to Paragraph 8 of the Complaint, AutoNation admits, upon information and belief, that Weiss held the position ascribed to him until April 4, 2009, but denies that he held that position “at all material times,” as that term is not defined in the Complaint. AutoNation denies that Weiss was at any time its agent within the meaning of the NLRA. Upon information and belief, AutoNation denies that Weiss was at any time an agent of MBO.

9. (a) Responding to Paragraph 9(a) of the Complaint, upon information and belief, AutoNation denies the allegations contained therein.

(b) Responding to Paragraph 9(b) of the Complaint, upon information and belief, AutoNation admits that a majority of the segment of MBO employees referred to in the Complaint as “the Unit,” which is a group of MBO employees that is inappropriate for bargaining under Section 9(b) of the NLRA, voted in favor of the Union on December 16, 2008. AutoNation also admits, upon information and belief, that the Regional Director improperly certified the Union as the exclusive bargaining representative of “the

Unit” on February 11, 2009. AutoNation denies all remaining allegations in Paragraph 9(b) of the Complaint.

(c) Responding to Paragraph 9(c) of the Complaint, upon information and belief, AutoNation denies the allegations contained therein.

(d) Responding to Paragraph 9(d) of the Complaint, AutoNation avers that the Board’s decision reported at 354 NLRB No. 72 speaks for itself.

(e) Responding to Paragraph 9(e) of the Complaint, upon information and belief, AutoNation admits the allegations contained therein.

10. Responding to Paragraph 10 of the Complaint, AutoNation admits that the AutoNation Associate Handbook contains the quoted language and that the handbook has been disseminated at dealerships other than MBO.

11. Responding to Paragraph 11 of the Complaint, AutoNation denies the allegations contained therein.

12. Responding to Paragraph 12 of the Complaint, upon information and belief, AutoNation admits only that, on or about September 25, 2008, Berryhill solicited grievances from employees. AutoNation denies the remaining allegations contained therein, as they state only conclusions of law, not assertions of fact, and do not require a response.

13. Responding to Paragraphs 13(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.

14. Responding to Paragraph 14 of the Complaint, AutoNation denies the allegations contained therein.

15. Responding to Paragraphs 15(a) through (g) of the Complaint, AutoNation denies the allegations contained therein.

16. Responding to Paragraph 16 of the Complaint, AutoNation denies the allegations contained therein.
17. Responding to Paragraphs 17(a) through (d) of the Complaint, AutoNation denies the allegations contained therein.
18. Responding to Paragraphs 18(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.
19. Responding to Paragraph 19 of the Complaint, AutoNation denies the allegations contained therein.
20. Responding to Paragraph 20 of the Complaint, AutoNation denies the allegations contained therein.
21. Responding to Paragraph 21 of the Complaint, AutoNation denies the allegations contained therein.
22. Responding to Paragraph 22 of the Complaint, AutoNation denies the allegations contained therein.
23. Responding to Paragraph 23(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.
24. Responding to Paragraphs 24(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.
25. Responding to Paragraph 25 of the Complaint, AutoNation denies the allegations contained therein.
26. Responding to Paragraph 26(a) through (c) of the Complaint, AutoNation denies the allegations contained therein.

27. Responding to Paragraph 27 of the Complaint, AutoNation denies the allegations contained therein.
28. Responding to Paragraph 28 of the Complaint, AutoNation denies the allegations contained therein.
29. Responding to Paragraph 29 of the Complaint, AutoNation denies the allegations contained therein.
30. Responding to Paragraph 30 of the Complaint, AutoNation denies the allegations contained therein.
31. Responding to Paragraphs 31(a) through (f) of the Complaint, AutoNation denies the allegations contained therein.
32. Responding to Paragraphs 32(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.
33. Responding to Paragraph 33 of the Complaint, AutoNation denies the allegations contained therein.
34. Responding to Paragraph 34 of the Complaint, AutoNation denies the allegations contained therein.
35. Responding to Paragraph 35 of the Complaint, AutoNation denies the allegations contained therein.
36. Responding to Paragraphs 36(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.
37. Responding to Paragraph 37 of the Complaint, AutoNation denies the allegations contained therein.

38. Responding to Paragraph 38 of the Complaint, AutoNation denies the allegations contained therein.
39. Responding to Paragraph 39 of the Complaint, AutoNation denies the allegations contained therein.
40. Responding to Paragraphs 40(a) and (b) of the Complaint, AutoNation denies the allegations contained therein.
41. (a) Responding to Paragraph 41(a) of the Complaint, AutoNation, upon information and belief, admits that, on or about December 8, 2008, MBO discharged Anthony Roberts.
- (b) Responding to Paragraph 41(b) of the Complaint, AutoNation, upon information and belief, admits that, on or about April 2, 2009, MBO discharged Juan Cazorla.
- (c) Responding to Paragraph 41(c) of the Complaint, AutoNation, upon information and belief, admits that, on or about April 3, 2009, MBO discharged David Poppo, Tumeshwar "John" Persaud, and Larry Puzon.
- (d) Responding to Paragraph 41(d) of the Complaint, AutoNation denies the allegations contained therein.
- (e) Responding to Paragraph 41(e) of the Complaint, AutoNation denies the allegations contained therein.
- (f) Responding to Paragraph 41(f) of the Complaint, AutoNation denies the allegations contained therein.
- (g) Responding to Paragraph 41(g) of the Complaint, AutoNation denies the allegations contained therein.

42. (a) Responding to Paragraph 42(a) of the Complaint, AutoNation denies the allegations contained therein.
- (b) Responding to Paragraph 42(b) of the Complaint, AutoNation, upon information and belief, admits that Catalano was issued a “documented coaching” on or about October 13, 2009.
- (c) Responding to Paragraph 42(c) of the Complaint, AutoNation denies the allegations contained therein.
43. (a) Responding to Paragraph 43(a), AutoNation denies the allegations contained therein.
- (b) Responding to Paragraph 43(b), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein upon information and belief.
- (c) Responding to Paragraph 43(c), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein upon information and belief.
- (d) Responding to Paragraph 43(d), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein upon information and belief.
- (e) Responding to Paragraph 43(e), the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is

required, AutoNation denies the allegations contained therein upon information and belief.

44. Responding to Paragraph 44 of the Complaint, no response is necessary, because the Paragraph contains only conclusions of law, and no allegations of fact. To the extent a response is necessary, AutoNation denies the allegations contained therein.

45. Responding to Paragraph 45, the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, AutoNation denies the allegations contained therein and avers that, upon information and belief, MBO was under no duty to undertake any of those actions.

46. Responding to Paragraph 46 of the Complaint, AutoNation admits the allegations contained therein. Further, AutoNation avers that the Union was not lawfully entitled to the information it requested.

47. Responding to Paragraph 47 of the Complaint, AutoNation denies the allegations contained therein.

48. Responding to Paragraph 48, the allegations contained therein do not pertain to AutoNation, and therefore no response is necessary. To the extent that a response is required, upon information and belief, AutoNation admits the allegations contained therein, and AutoNation avers that MBO was under no duty to provide the information requested, because, among other reasons, the Regional Director's certification of the Union as the exclusive bargaining representative for a segment of MBO employees was improper.

49. Responding to Paragraph 49 of the Complaint, AutoNation denies the allegations contained therein.

50. Responding to Paragraph 50 of the Complaint, AutoNation denies the allegations contained therein.

51. Responding to Paragraph 51 of the Complaint, AutoNation denies the allegations contained therein.

52. Responding to Paragraph 52 of the Complaint, AutoNation denies the allegations contained therein.

Responding to the unnumbered WHEREFORE clause in the Complaint, AutoNation denies that the Counsel for the General Counsel is entitled to any of the relief sought therein. Any allegations not expressly admitted are hereby denied.

WHEREFORE, having fully answered the Complaint, AutoNation prays that it be dismissed, or in the alternative, that Counsel for the General Counsel be held to strict proof of all allegations not specifically admitted.

Respectfully submitted this 14th day of June, 2010.

/s/ Brian M. Herman
DOUGLAS R. SULLENBERGER
STEVEN M. BERNSTEIN
BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
AUTONATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2010, I e-filed the foregoing RESPONDENT AUTONATION, INC.'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED CONSOLIDATED COMPLAINT using the Board's e-filing system and that it was served by Federal Express on the following:

David Porter
100 Bent Tree Drive, Apt. 110
Daytona Beach, FL 32114

Christopher T. Corsen
General Counsel
International Association of Machinists
and Aerospace Workers, AFL-CIO
9000 Machinists Place, Room 202
Upper Marlboro, MD 20772

/s/ Brian M. Herman
DOUGLAS R. SULLENBERGER
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BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
AUTONATION, INC.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

CONTEMPORARY CARS, INC. D/B/A)	
MERCEDES-BENZ OF ORLANDO AND)	
AUTONATION, INC., SINGLE AND JOINT)	
EMPLOYERS)	
	)	Charge Nos. 12-CA-26126
and	)	12-CA-26233
	)	12-CA-26306
INTERNATIONAL ASSOCIATION OF	)	12-CA-26354
MACHINISTS AND AEROSPACE	)	12-CA-26386
WORKERS, AFL-CIO	)	12-CA-26552

**RESPONDENT CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF
ORLANDO'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO THE
AMENDED CONSOLIDATED COMPLAINT**

Comes now Respondent CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO ("MBO"), by and through undersigned Counsel, and, pursuant to Section 102.23 of the Board's Rules and Regulations, as amended, timely files the following Amended Answer and Affirmative Defenses to the Amended Consolidated Complaint ("Complaint") issued by the Regional Director on June 8, 2010.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor Relations Board (NLRB) and the service of such charge upon MBO, such allegations are time-barred by Section 10(b) of the National Labor Relations Act, as amended (hereinafter "NLRA").

SECOND DEFENSE

The Complaint fails to give MBO fair and adequate notice of the charges against it and thereby denies MBO its right to due process under the U.S. Constitution, its right to notice of the charges under Section 10 of the NLRA, and its right to notice and a fair hearing under the Board's Rules and Regulations.

THIRD DEFENSE

The Complaint is invalid to the extent that any alleged agents of MBO committed acts that are ultimately determined to be outside the scope of their employment, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The Complaint is invalid to the extent that it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

All allegations of discriminatory treatment are invalid to the extent that any alleged discriminatee would have been treated in precisely the same manner in the absence of any alleged improper animus.

SIXTH DEFENSE

The Region's investigation establishes that MBO had a valid economic justification for laying off the alleged discriminatees named in Paragraphs 41(a) through 41(c) of the Complaint.

SEVENTH DEFENSE

The Complaint is invalid to the extent that that General Counsel has pled legal conclusions rather than required factual allegations.

EIGHTH DEFENSE

The group of MBO employees composing the unit for which the Union was certified as the exclusive bargaining representative is an inappropriate unit for collective bargaining, and said certification is presently under challenge before the U.S. Court of Appeals.

NINTH DEFENSE

There has not been a proper resolution of MBO's Request for Review of the Region's determination on the appropriateness of the voting unit in Case No. 12-RC-9344. The December 15, 2008 order denying Respondent's December 5, 2008 Request for Review is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

TENTH DEFENSE

There has not been a proper resolution of Counsel for the General Counsel's Motion for Summary Judgment in Case No. 12-CA-26377. The August 28, 2009 Decision and Order granting Counsel for the General Counsel's July 13, 2009 Motion for Summary Judgment, found at 354 NLRB No. 72, is illegitimate and carries no weight, because the two-member panel that issued it lacked authority to do so. *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009).

ELEVENTH DEFENSE

To the extent that any alleged changes were made to the terms or conditions of employment, they were made in the ordinary course of business, and did not alter the course of business or the *status quo ante*.

TWELFTH DEFENSE

Supervisors and agents of MBO expressed only views, arguments, or opinions, containing no threat of reprisal, promise of benefits, or suggestion of surveillance. Such statements were protected in their entirety by Section 8(c) of the Act.

THIRTEENTH DEFENSE

The Complaint is invalid to the extent that it contains allegations that were not included within a timely-filed, pending unfair labor practice charge against MBO.

FOURTEENTH DEFENSE

The Complaint is barred by the doctrine of laches.

FIFTEENTH DEFENSE

Attorney Douglas R. Sullenberger is not an agent of MBO.

SIXTEENTH DEFENSE

The Complaint is invalid to the extent that it asserts frivolous claims against MBO, and actively mischaracterizes the facts known to General Counsel in an attempt to create a prejudicial distortion of the actual facts.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

Responding to the initial unnumbered paragraphs of the Complaint, MBO denies that it has committed any unfair labor practices.

1. Responding to Paragraphs 1(a) through 1(o) of the Complaint, MBO admits that the charges and amendments were filed on the dates listed and that MBO has received them, but MBO has no knowledge as to the dates on which the Board placed them in the mail.
2. (a). Responding to Paragraph 2(a) of the Complaint, MBO admits the allegations contained therein.

(b). Responding to Paragraph 2(b) of the Complaint, MBO admits the allegations contained therein.

(c). Responding to Paragraph 2(c) of the Complaint, MBO admits the allegations contained therein.

3. (a). Responding to Paragraph 3(a) of the Complaint, MBO lacks sufficient information to admit or deny the allegations contained therein, and thus denies them.
- (b). Responding to Paragraph 3(b) of the Complaint, MBO lacks sufficient information to admit or deny the allegations contained therein, and thus denies them.
- (c). Responding to Paragraph 3(c) of the Complaint, MBO lacks sufficient information to admit or deny the allegations contained therein, and thus denies them.
4. (a) Responding to Paragraph 4(a) of the Complaint, MBO admits that, with respect to the events covered by the Complaint, it and AutoNation are affiliated business enterprises, that it and AutoNation share common ownership, that it and AutoNation have formulated and administered a common labor policy, and that it and AutoNation have provided services for and made sales to each other. MBO denies that it and AutoNation share common officers, directors, or management, that it and AutoNation have common supervision, that it and AutoNation share common premises and facilities, that it and AutoNation have interchanged personnel with each other, or that it and AutoNation have held themselves out to the public as single-integrated business enterprises.
- (b) Responding to Paragraph 4(b) of the Complaint, MBO admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 4(a) of this Answer indicate that MBO and AutoNation constitute a single integrated enterprise and a single employer. MBO further admits that it and AutoNation are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. MBO makes this admission of single integrated enterprise and single employer status with the recognition that MBO denies that it and AutoNation shared or will share the same relationship with respect to events or

circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. MBO makes the preceding admissions responding to Paragraphs 4(a) and 4(b) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other single integrated enterprise or single employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, MBO states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and MBO will challenge the admissibility of the preceding admissions in any other forum or proceeding.

5. (a) Responding to Paragraph 5(a) of the Complaint, MBO denies the allegations contained therein.
- (b) Responding to Paragraph 5(b) of the Complaint, MBO admits that, with respect to the events covered by the Complaint, AutoNation has possessed and exercised measures of control over the labor relations policy at MBO, and that, to the extent AutoNation's relationship with MBO in this case can be described as a "common labor policy," such "common labor policy" was jointly administered by it and AutoNation.
- (c) Responding to Paragraph 5(c) of the Complaint, MBO admits that, taken together and as applied to the facts of this case, the admissions made in Paragraph 5(b) of this Answer indicate that MBO and AutoNation are joint employers of the technicians

working at MBO. MBO further admits that it and AutoNation are jointly liable to remedy unfair labor practices found by the NLRB with respect to the allegations contained in the Complaint, if any such determinations are made. MBO makes this admission that it and AutoNation jointly employ the technicians working at MBO with the recognition that MBO denies that it and AutoNation shared or will share the same relationship with respect to events or circumstances occurring prior to or after the time period covered by the allegations made in the Complaint. MBO makes the preceding admissions responding to Paragraphs 5(b) and 5(c) of the Complaint with the recognition that those admissions (1) are limited without exception to the allegations made in the Complaint and made solely for purposes of this Complaint and (2) are not indicative, conclusive, or determinative of any other joint employer analysis whatsoever, regardless of context, involving or relating to AutoNation or any of its officers, directors, employees, agents, parent corporation(s), subsidiary corporation(s), wholly owned companies, affiliates and divisions. Furthermore, MBO states that the preceding admissions do not constitute binding admissions for any other purpose other than with respect to the allegations contained in the Complaint, including pending and future Board proceedings involving either MBO or AutoNation or both, and MBO will challenge the admissibility of the preceding admissions in any other forum or proceeding.

6. Responding to Paragraph 6 of the Complaint, MBO admits the allegations contained therein.
7. (a) Responding to Paragraph 7(a) of the Complaint, MBO admits that Berryhill, Bullock, Makin, Menendez, and Miller have at times held the positions listed opposite their names and have at times been agents and supervisors of MBO within the meaning of

NLRA, but denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint. MBO admits, upon information and belief, that Bickram and DeVita have at times held the positions listed opposite their names and have at times been agents and supervisors of Respondent AutoNation within the meaning of the NLRA, but denies that they held such positions and were agents and supervisors within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint. MBO denies that Bickram and DeVita acted as supervisors over MBO employees at any time.

(b) Responding to Paragraph 7(b) of the Complaint, MBO admits, upon information and belief, that Bonavia at times and until December 31, 2009 held the position ascribed to her in the Complaint and that she was at times an agent and supervisor of Respondent AutoNation, but denies that she held such position and was an agent and supervisor “at all material times,” as that term is not defined in the Complaint. MBO denies that Bonavia acted as a supervisor over MBO employees at any time.

(c) Responding to Paragraph 7(c) of the Complaint, MBO admits that Grobler and Manbahal at times and until early to mid-December 2008 held the positions listed opposite their names and were agents and supervisors of MBO within the meaning of the NLRA, but denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint.

(d) Responding to Paragraph 7(d) of the Complaint, MBO admits that Aviles and Strong at times since early to mid-December 2008 held the positions listed opposite their names and were agents and supervisors of MBO within the meaning of the NLRA, but

denies that they held such positions and were agents and supervisors of MBO within the meaning of the NLRA “at all material times,” as that term is not defined in the Complaint.

8. Responding to Paragraph 8 of the Complaint, MBO admits that Weiss held the position ascribed to him until April 4, 2009, but denies that he held that position “at all material times,” as that term is not defined in the Complaint. MBO denies that Weiss was at any time its agent within the meaning of the NLRA. Upon information and belief, MBO denies that Weiss was at any time an agent of Respondent AutoNation.
9. (a) Responding to Paragraph 9(a) of the Complaint, MBO denies the allegations contained therein.
- (b) Responding to Paragraph 9(b) of the Complaint, MBO admits that a majority of the segment of employees referred to in the Complaint as “the Unit,” which is a group of employees that is inappropriate for bargaining under Section 9(b) of the NLRA, voted in favor of the Union on December 16, 2008. MBO also admits that the Regional Director improperly certified the Union as the exclusive bargaining representative of “the Unit” on February 11, 2009. MBO denies all remaining allegations in Paragraph 9(b) of the Complaint.
- (c) Responding to Paragraph 9(c) of the Complaint, MBO denies the allegations contained therein.
- (d) Responding to Paragraph 9(d) of the Complaint, MBO avers that the Board’s decision reported at 354 NLRB No. 72 speaks for itself.
- (e) Responding to Paragraph 9(e) of the Complaint, MBO admits the allegations contained therein.

10. Responding to Paragraph 10 of the Complaint, MBO admits that the AutoNation Associate Handbook contains the quoted language and that it has been distributed to MBO employees. MBO avers that the quoted language has not been enforced as written. MBO lacks knowledge or information sufficient to form a belief as to the extent to which the AutoNation Associate Handbook is used or has been used at other dealerships, and thus denies the remaining allegations set forth in Paragraph 10 of the Complaint.
11. Responding to Paragraph 11 of the Complaint, MBO denies the allegations contained therein.
12. Responding to Paragraph 12 of the Complaint, MBO admits only that, on or about September 25, 2008, Berryhill solicited grievances from employees. MBO denies the remaining allegations contained therein, as they state only conclusions of law, not assertions of fact, and do not require a response.
13. Responding to Paragraphs 13(a) and (b) of the Complaint, MBO denies the allegations contained therein.
14. Responding to Paragraph 14 of the Complaint, MBO denies the allegations contained therein.
15. Responding to Paragraphs 15(a) through (g) of the Complaint, MBO denies the allegations contained therein.
16. Responding to Paragraph 16 of the Complaint, MBO denies the allegations contained therein.
17. Responding to Paragraphs 17(a) through (d) of the Complaint, MBO denies the allegations contained therein.

18. Responding to Paragraphs 18(a) and (b) of the Complaint, MBO denies the allegations contained therein.
19. Responding to Paragraph 19 of the Complaint, MBO denies the allegations contained therein.
20. Responding to Paragraph 20 of the Complaint, MBO denies the allegations contained therein.
21. Responding to Paragraph 21 of the Complaint, MBO denies the allegations contained therein.
22. Responding to Paragraph 22 of the Complaint, MBO denies the allegations contained therein.
23. Responding to Paragraph 23(a) and (b) of the Complaint, MBO denies the allegations contained therein.
24. Responding to Paragraphs 24(a) and (b) of the Complaint, MBO denies the allegations contained therein.
25. Responding to Paragraph 25 of the Complaint, MBO denies the allegations contained therein.
26. Responding to Paragraph 26(a) through (c) of the Complaint, MBO denies the allegations contained therein.
27. Responding to Paragraph 27 of the Complaint, MBO denies the allegations contained therein.
28. Responding to Paragraph 28 of the Complaint, MBO denies the allegations contained therein.

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30. Responding to Paragraph 30 of the Complaint, MBO denies the allegations contained therein.
31. Responding to Paragraphs 31(a) through (f) of the Complaint, MBO denies the allegations contained therein.
32. Responding to Paragraphs 32(a) and (b) of the Complaint, MBO denies the allegations contained therein.
33. Responding to Paragraph 33 of the Complaint, MBO denies the allegations contained therein.
34. Responding to Paragraph 34 of the Complaint, MBO denies the allegations contained therein.
35. Responding to Paragraph 35 of the Complaint, MBO denies the allegations contained therein.
36. Responding to Paragraphs 36(a) and (b) of the Complaint, MBO denies the allegations contained therein.
37. Responding to Paragraph 37 of the Complaint, MBO denies the allegations contained therein.
38. Responding to Paragraph 38 of the Complaint, MBO denies the allegations contained therein.
39. Responding to Paragraph 39 of the Complaint, MBO denies the allegations contained therein.

40. Responding to Paragraphs 40(a) and (b) of the Complaint, MBO denies the allegations contained therein.
41. (a) Responding to Paragraph 41(a) of the Complaint, MBO admits that, on or about December 8, 2008, Anthony Roberts was discharged.
- (b) Responding to Paragraph 41(b) of the Complaint, MBO admits that, on or about April 2, 2009, Juan Cazorla was discharged.
- (c) Responding to Paragraph 41(c) of the Complaint, MBO admits that, on or about April 3, 2009, David Poppo, Tumeshwar “John” Persaud, and Larry Puzon were discharged.
- (d) Responding to Paragraph 41(d) of the Complaint, MBO denies the allegations contained therein.
- (e) Responding to Paragraph 41(e) of the Complaint, MBO denies the allegations contained therein.
- (f) Responding to Paragraph 41(f) of the Complaint, MBO denies the allegations contained therein.
- (g) Responding to Paragraph 41(g) of the Complaint, MBO denies the allegations contained therein.
42. (a) Responding to Paragraph 42(a) of the Complaint, MBO denies the allegations contained therein.
- (b) Responding to Paragraph 42(b) of the Complaint, MBO admits that Catalano was issued a “documented coaching” on or about October 13, 2009.
- (c) Responding to Paragraph 42(c) of the Complaint, MBO denies the allegations contained therein.

43. Responding to Paragraphs 43(a) through (e) of the Complaint, MBO denies the allegations contained therein.
44. Responding to Paragraph 44 of the Complaint, no response is necessary, because the Paragraph contains only conclusions of law, and no allegations of fact. To the extent a response is necessary, MBO denies the allegations contained therein.
45. Responding to Paragraph 45 of the Complaint, MBO avers that it did not engage in the conduct alleged in Paragraphs 43(a) through 43(e) of the Complaint, and therefore, to the extent that any response is necessary to the allegations in Paragraph 45 that relate to Paragraphs 43(a) through (e), MBO denies those allegations. With respect to the discharges of Cazorla, Poppo, Persaud, and Puzon as alleged and admitted in Paragraphs 41(b) and 41(c) of the Complaint, MBO admits the allegations contained in Paragraph 45 of the Complaint, and MBO avers that it was under no duty to undertake any of those actions.
46. Responding to Paragraph 46 of the Complaint, MBO admits the allegations contained therein. Further, MBO avers that the Union was not lawfully entitled to the information it requested.
47. Responding to Paragraph 47 of the Complaint, MBO denies the allegations contained therein.
48. Responding to Paragraph 48 of the Complaint, MBO admits the allegations contained therein, and MBO avers that it was under no duty to provide the information requested, because, among other reasons, the Regional Director's certification of the Union as the exclusive bargaining representative for a segment of MBO employees was improper.

49. Responding to Paragraph 49 of the Complaint, MBO denies the allegations contained therein.

50. Responding to Paragraph 50 of the Complaint, MBO denies the allegations contained therein.

51. Responding to Paragraph 51 of the Complaint, MBO denies the allegations contained therein.

52. Responding to Paragraph 52 of the Complaint, MBO denies the allegations contained therein.

Responding to the unnumbered WHEREFORE clause in the Complaint, MBO denies that the Counsel for the General Counsel is entitled to any of the relief sought therein. Any allegations not expressly admitted are hereby denied.

WHEREFORE, having fully answered the Complaint, MBO prays that it be dismissed, or in the alternative, that Counsel for the General Counsel be held to strict proof of all allegations not specifically admitted.

Respectfully submitted this 14th day of June, 2010.

/s/ Brian M. Herman
DOUGLAS R. SULLENBERGER
STEVEN M. BERNSTEIN
BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2010, I e-filed the foregoing RESPONDENT CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED CONSOLIDATED COMPLAINT using the Board's e-filing system and that it was served by Federal Express on the following:

David Porter
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For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

CONTEMPORARY CARS, INC. D/B/A)		
MERCEDES-BENZ OF ORLANDO AND)		
AUTONATION, INC., SINGLE AND JOINT)		
EMPLOYERS)		
	)	Charge Nos.	12-CA-26126
and	)		12-CA-26233
	)		12-CA-26306
INTERNATIONAL ASSOCIATION OF	)		12-CA-26354
MACHINISTS AND AEROSPACE	)		12-CA-26386
WORKERS, AFL-CIO	)		12-CA-26552

**RESPONDENTS CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO AND AUTONATION, INC.'S
EMERGENCY MOTION FOR CONTINUANCE**

Come now Respondents CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO ("MBO") and AUTONATION, INC. ("AutoNation" or collectively "Respondents"), by and through undersigned Counsel, and, pursuant to Section 102.24(a) of the Board's Rules and Regulations, as amended, hereby move, on an emergency basis, for a continuance of the June 21, 2010 hearing scheduled in these cases. As discussed more thoroughly in the Respondents' Motion for Partial Summary Judgment contemporaneously filed with the Office of the Executive Secretary, a copy of which is attached as Exhibit A, this Motion is based upon yesterday's decision of the U.S. Supreme Court in *New Process Steel, L.P. v. National Labor Relations Board*, 564 U.S. 840, Case No. 08-457 (2010) and its impact on a substantial number of intertwining issues raised in these consolidated cases, along with those pending before the U.S. Circuit Court of Appeals for the D.C. Circuit in Case Nos. 09-1235 and 09-1248. In support of this Emergency Motion for Continuance, Respondents state as follows:

1. The Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing in the instant case was issued on March 31, 2010. The Order Further Consolidating Cases and Amendment to Consolidated Complaint was entered on June 8, 2010, alleging, *inter alia*, that Respondents refused to bargain, in violation of Sections 8(a)(1) and (5) of the National Labor Relations Act ("NLRA"). These matters have been set for an evidentiary hearing to be conducted in Orlando, Florida on June 21, 2010. A substantial number of the allegations underlying the Amended Consolidated Complaint pre-suppose a duty to bargain on the part of Respondents, as set forth in Paragraph 51, which refers to no less than a dozen sub-paragraphs alleging conduct in violation of Section 8(a)(5) of the Act.

2. As discussed in the attached Motion for Partial Summary Judgment, in less than 24 business hours, the Board is planning to conduct an evidentiary hearing that erroneously pre-supposes a duty to bargain, as expressly stated in Paragraphs 9(a)-(c), 40(a)-(b), 41(b)-(c), 43(a)-(e), 45, 46, 47, 48, and 51 of the Amended Consolidated Complaint, despite the fact that the highest Court in the land has ruled that the Board had no legal authority impose such an obligation.

3. Many of the issues in these consolidated cases are mooted by the Supreme Court's ruling in *New Process Steel* and the D.C. Circuit's impending ruling summarily reversing the Board's holding (and thus the certification of the Union) in Case No. 12-CA-26377. Respondents cannot and should not be required to go forward, produce evidence and otherwise litigate these cases unless and until Counsel for the General Counsel amends the Amended Complaint to withdraw those allegations premised on the Board's certification of the Union as the exclusive bargaining representative of technicians working at MBO.

4. The parties in this matter conducted a telephonic conference on the morning of June 18, 2010, at which point Counsel for Respondents verbally requested an immediate continuance of these proceedings. In response, the Administrative Law Judge directed Respondents to file this Motion with the Division of Judges and direct it to the attention of Associate Chief Administrative Law Judge William Cates.

5. Given the impending time constraints, Respondents respectfully urge the Board to act precipitously.

Respectfully submitted this 18th day of June, 2010.

/s/ Brian M. Herman
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STEVEN M. BERNSTEIN
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For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO AND
AUTONATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2010, I e-filed the foregoing **RESPONDENTS CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO AND AUTONATION, INC.'S EMERGENCY MOTION FOR CONTINUANCE** using the Board's e-filing system and that it was served on the following (by electronic mail on Mr. Aybar and Ms. Kentov, and via Federal Express on Messrs. Corsen and Porter):

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COUNSEL FOR RESPONDENTS

CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO AND
AUTONATION, INC.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE**

**CONTEMPORARY CARS, INC. d/b/a
MERCEDES-BENZ OF ORLANDO AND
AUTONATION, INC., SINGLE AND
JOINT EMPLOYERS**

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

**CASES 12-CA-26126
12-CA-26233
12-CA-26306
12-CA-26354
12-CA-26386
12-CA-26552**

**ORDER GRANTING RESPONDENTS CONTEMPORARY
CARS, INC. d/b/a MERCEDES-BENZ OF ORLANDO AND
AUTONATION, INC'S EMERGENCY MOTION FOR CONTINUANCE**

On June 18, 2010, Counsel for the Respondents Filed an Emergency Motion for Continuance of trial in the above-styled cases previously scheduled for June 21, 2010. As grounds for the Motion, Counsel for Respondents assert a substantial number of the complaint allegations in the above-styled cases pre-suppose a duty to bargain on the part of the Respondents based on the Board's related decision, Mercedes-Benz of Orlando 354 NLRB No. 72 (August 28, 2009). Respondents note the related decision was issued by a two-member Board. Respondents note the United States Supreme Court in *New Process Steel, L. P. v. NLRB* 564 U.S. 840 (June 17, 2010) held the Board lacked authority to issue enforceable decisions while operating as a two-member body. Respondents contend the Supreme Court's decision has nullified the Board's underlying related decision that established the Respondents duty to bargain. Respondents urge the trial be continued until the matters raised, as a result of the Supreme Court's recent decision, are resolved.

On June 18, 2010, Counsel for General Counsel filed an Opposition to Respondents Motion. Counsel for General Counsel notes there are numerous allegations of Section 8(a)(1) and (3) violations of the Act, in the above-styled cases and, the discharge of four employees are alleged to have violated both Sections 8(a)(3) and (5) of the Act. Counsel for General Counsel further notes there, "are also a relatively small number of separate Section 8(a)(5) unilateral charge allegations", and a refusal to furnish information allegation. Counsel for General Counsel

in essence argues the cases should be permitted to go forward as currently scheduled arguing the most likely situation will be that the Board will have to reconsider whether or not the Regional Director's certification of the Union as the employees' exclusive collective-bargaining representative was proper and thus whether it properly decided the related case, Mercedes-Benz of Orlando 354 NLRB No. 72 (August 28, 2009). Counsel for General Counsel asserts it is likely the Board will act on the reconsideration expeditiously. Counsel for General Counsel urges the cases should proceed to trial as scheduled.

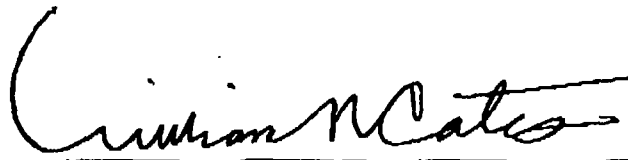
I am persuaded good cause has been established for a continuance of the cases herein. The Board will, upon review, provide direction applicable to the cases herein.

ACCORDINGLY,

IT IS ORDERED that trial in the above-styled cases be, and hereby is, continued to an appropriate date after the Board has considered the ramifications of the Supreme Court's recent decision to the underlying related Board decision that impacts certain of the issues herein.

SO ORDERED.

Dated at Atlanta, Georgia this 18th day of June, 2010.

A handwritten signature in black ink, appearing to read "William N. Cates", written over a horizontal line.

William N. Cates
Associate Chief Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order Granting Respondents Contemporary Cars Inc., d/b/a Mercedes-Benz of Orlando and Autonation, Inc's. Emergency Motion for Continuance was served facsimile and regular mail upon each of the following parties:

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Subscribed and sworn to before me this 18th day of June, 2010.



Judy D. Bailey, Designated Agent

Willene F. Heflin